

**WASTE MANAGEMENT BOARD ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
SCOTT COUNTY**

SECTION A: Purpose

This is an Enforcement Order issued by the Virginia Waste Management Board to Scott County. This order is issued by the Board, through the Director of the Department of Environmental Quality pursuant to the authority granted to the Board and the Director under sections ' 10.1-1402 and ' 10.1-1185 to resolve certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code ' 10.1-1401 and ' 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Facility” means the area occupied by tracts of land defined as Parcel 1 and Parcel 2.
6. “SWRO” means the Department’s Southwest Regional Office, located in Abingdon, Virginia.
7. “Order” means this document, also known as a consent order.
8. “County” means Scott County, located in Southwest Virginia.

9. "Parcel 1" means a 30-acre tract of land purchased by the County in 1970; as recorded in Deed Book 260, page 218 and shown in Plat Book 4, page 59.
10. "Parcel 2" means a 30-acre tract of land adjacent to the southern boundary of Parcel 1, purchased by the County in 1973; as recorded in Deed Book 279, page 306.
11. "Parcel 3" means a 102-acre tract of land adjacent to the eastern boundaries of Parcel 1 and Parcel 2, purchased by the County in 1984 as recorded in Deed Book 344, page 397 and shown in Plat Book 7, page 27.
12. "Permit" means sanitary landfill Permit #023 issued to Scott County by the Virginia Department of Health on September 27, 1971 for the area covered by Parcel 1.

SECTION C: Findings of Facts and Conclusions of Law

1. Code ' 10.1-1408.1 and Board Regulation 9 VAC 20-80-90 state that no person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the director.
2. The County owns and operates a sanitary landfill on Parcel 2 located approximately ten miles northeast of Gate City.
3. On February 14, 1974 the County filed an application with the Virginia Department of Health ("VDH") to modify and expand existing Permit #023 to include Parcel 2.
4. The VDH issued a letter to the County on March 6, 1974 stating that the Permit would be revised to include the proposed expansion on Parcel 2 when a design plan covering site preparation, construction, and operation was submitted and approved.
5. On July 17, 1975 the County, by letter and enclosures, sent three copies of the Operational Design and Construction Plan to the VDH for review and approval.
6. On August 27, 1975 the VDH issued a letter to the County stating that the Plan met present requirements for approval and was in accordance with the Regulation of the VDH Governing the Disposal of Solid Waste (Chapter XXVIII - The Health Laws of Virginia, 1971 Edition).
7. On May 5, 2003 DEQ issued a Notice of Violation (NOV) to Scott County. The NOV cited concerns that Scott County was depositing solid waste outside of the Permit #023 boundary.

8. On May 13, 2003 DEQ and the County met to discuss the Permit issue as it related to waste disposal on Parcel 2. Neither the County nor DEQ could produce a copy of a modified Permit specific to Parcel 2.
9. Both the County and DEQ recognize the time lapse (27+ years) since the County should have received the modified permit from VDH to expand waste disposal onto Parcel 2. DEQ agrees that the County was issued Operational Design and Construction Plan approval letters from the VDH. DEQ and the County agree neither is certain whether or not a final modified Permit was ever issued by VDH; both parties agree that neither possesses a copy of the modified Permit from the Director of the VDH which would cover waste disposal on Parcel 2.
10. DEQ agrees that waste disposal may continue on Parcel 2 in accordance with Va. Code §10.1-1408.1.N, §10.1-1413.2, and specifications of Appendix A of this Order. Scott County agrees that the Parcel 2 waste management unit shall comply with the laws and Regulations of the Virginia Waste Management Act and the Board.

SECTION D: Agreement and Order

Accordingly the Virginia Waste Management Board, by virtue of the authority granted it pursuant to Va. Code §10.1-1455 (F), orders the County, and the County agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. The County declares it has received fair and due process under the Administrative Process Act, Code ' ' 2.2-4000 *et seq.*, and the State Waste Management Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The County must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

9. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the County. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, the County voluntarily agrees to the issuance of this Order.

Date: _____

Robert G. Burnley, Director
Department of Environmental Quality

Scott County

Name: _____

Date: _____

State of Virginia

City/County of _____

The foregoing instrument was acknowledged before me this _____ by
(Date)

_____, _____ of Scott County.
(name) (title)

Date

Notary Public

My commission expires:

APPENDIX A

In order to comply with the provisions of the Virginia Waste Management Act and Solid Waste Management Regulations, the County agrees to implement the following actions as described below:

Site Survey

1. No later than 45-days after the effective date of this Order, the County shall submit to the Department, a site survey performed and certified by a licensed land surveyor that delineates the lateral extent of all disposal areas associated with waste activities on Parcels 1, 2, and 3, and the exact surveyed property boundary of Parcels 1 and 2. Any waste unit boundary in question, shall be verified and delineated by performing a series of augering or boring along the questionable boundaries.

Termination of Waste Disposal Activities

2. The County shall cease all disposal of solid waste on Parcel 2 within 60 months of the effective date of this Order, or when the final closure elevations in the vertical expansion area are reached, whichever first occurs.
3. The County shall not create or begin disposal of solid waste in a new waste unit on Parcel 1 or Parcel 2, or dispose of solid waste on any other adjacent property owned by the County, without first meeting the technical requirements of 9 VAC 20-80-10 *et seq.*, and obtaining a Permit from the Director.

Closure and Post-closure Activities

4. If the site survey required in Item 1 above indicates that solid waste has been placed outside the property boundaries of Parcel 1 or 2, the County shall, within 60 days, initiate removal and cleanup as provided for in 9 VAC 20-80-210 A, or closure in place as provided for in 9 VAC 20-80-210 B, or an alternative remedial action in accordance with the requirements of 9 VAC 20-80-210 C, or a combination of the three.
5. The County shall, within 180 days after the effective date of this Order, submit closure and post-closure plans for the facility to the Department meeting the requirements of 9 VAC 20-80-250.E. and 250.F.
6. The County shall, within 30 days after the last receipt of waste, implement the Department approved closure plan and complete all closure activities as required by 9 VAC 20-80-250.E.

7. Unless the post-closure care period is reduced, or extended, by the Director pursuant to 9 VAC 20-80-250.F.3, the County shall conduct post-closure care for thirty (30) years as required in 9 VAC 20-80-250.F.
8. If leachate is detected at the facility at any time in the future, the County shall immediately begin leachate management activities as specified in 9 VAC 20-80-290, and maintain an up-to-date Leachate Control Design Plan in the facility operating record.
9. The County shall comply with the groundwater monitoring requirements contained in the attached Modules X [Detection monitoring] and XI [Assessment monitoring] incorporated by reference into this Order. The County shall maintain an up-to-date Groundwater Monitoring Plan and a copy of the site specific Groundwater Protection Standards in the facility operating record.
10. The County shall continue to implement gas management activities as specified in 9 VAC 20-80-280. The County shall maintain an up-to-date Gas Monitoring Plan in the facility operating record.
11. The County shall maintain financial assurance as required under 9 VAC 20-70-10 *et seq.*

Remedial Actions

12. The County shall perform any groundwater corrective action required under Part V of the Regulations should the results of the groundwater monitoring warrant such action. The County shall implement a Corrective Action program meeting the requirements of 9 VAC 20-80-310.B.2; 9 VAC 20-80-310.B.4; and 9 VAC 20-80-310.C.1.
13. The County shall immediately comply with the requirements of 9 VAC 20-80-280.E.1. If methane is detected in excess of compliance levels, including the development and submittal of a gas remediation plan for Department approval.

General

14. DEQ shall have access to the facility for purposes of inspection, observation, and collection of samples. DEQ shall be allowed access during operation, closure, and post-closure period of the facility. DEQ access shall be ensured for the duration of this Order.
15. Any document that the County submits for Director review and approval after the effective date of this Order shall be accompanied by the applicable fee as would be required of Permitted solid waste facilities under 9 VAC 20-90 *et. seq.*, and Appendix 7.4 of the Regulations.

16. Scott County shall maintain all records relating to sanitary landfill operation as would be required by the Virginia Solid Waste Management Regulations to include, but not limited to, monitoring results, financial assurance documents, training documentation, waste disposal records, corrective action, groundwater, gas, or leachate management plans.

Attachments

In order to comply with the provisions of the Virginia Waste Management Act and Solid Waste Management Regulations, the County agrees to comply with all terms and conditions of these attached modules:

Module I:	General Conditions
Module X:	Detection Monitoring
Module XI:	Assessment Monitoring